

Statement of

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Department of Energy

before the

Subcommittee on Energy and Power

Committee on Commerce

House of Representatives

on

H.R. 649 and H.R. 363

February 26, 1997

Mr. Chairman and Members of the Subcommittee, the Department appreciates the opportunity to discuss two legislative proposals under consideration today by the Subcommittee, H.R. 649, the Department of Energy Standardization Act of 1997, and H.R. 363, a bill to extend the Electric and Magnetic Fields Research and Public Information Dissemination program.

When the Department was established nearly 20 years ago, Congress was in part responding to the energy crises of the 1970's. The most prominent Departmental missions during those times related to development and enforcement of pervasive economic regulation of virtually all of the Nation's energy economy. This setting resulted in Congress placing constraints on the Department's activities and employees in its 1977 organic act -- the Department of Energy Organization Act (DOE Act). Over time, it has been recognized that a number of these provisions either have become duplicative of existing law or are unnecessarily restrictive in view of the Department's evolving mission emphasis and the protections afforded the public by laws applying to all federal agencies. An example of this is the repeal by the last Congress of the prohibition of ownership of energy interests by supervisory employees at the Department, in part because ethics laws, as amended subsequent to the DOE Act's adoption and applying to all Federal employees, sufficiently protect the public interest. H.R. 649 would repeal additional provisions of the DOE Act that continue to impose unique requirements on activities by the Department in areas related to rulemakings and advisory committees, despite the presence of what we believe to be adequate government-wide rules and requirements.

First, H.R. 649 would repeal the DOE Act's procedural requirements for publication of proposals in the Federal Register, but would not affect the availability of important information to the

public. The DOE Act requires that a proposed rule, regulation or order include detailed information respecting research and other available information in support of the need for and probable effect of the action. This is essentially duplicative of Administrative Procedure Act provisions that have been regularly interpreted in decisions since the DOE Act was adopted as requiring agencies to disclose the basis or purpose of their rulemakings. Thus, repeal of the DOE Act provision would not affect the availability of important information to the public because the Administrative Procedure Act requirement would continue to apply. The DOE Act also imposes a mandatory minimum 30-day comment period for notices of proposed rulemaking. Experience has indicated that this time period is rarely sufficient, and in fact agencies routinely provide at least a 60-day comment period in compliance with Executive Order 12866. The DOE Act also includes special authority to impose procedural requirements on State or local agency rulemakings under delegation from the Department, which authority has never been used.

Perhaps most importantly, the DOE Act makes unavailable to this agency the provision of the Administrative Procedure Act under which matters relating to public property, loans, grants, or contracts otherwise might be exempt from the notice and comment provisions of that Act. While the DOE Act provisions may have been appropriate experiments at the Department's inception, it is the Department's position that government-wide rules and the Federal Acquisition Regulation process embellished by legislation enacted subsequent to the DOE Act are sufficient to protect the public's interests today. Further, during the previous Congress, I understand the Congressional Budget Office estimated that repeal of these provisions would save the Department as much as \$500,000 over 5 years.

Second, H.R. 649 would repeal special provisions applicable to DOE advisory committees. The particular provisions proposed for repeal were carried forward in the DOE Act from the Federal Energy Administration Act of 1974. In recognition of the mission of the Federal Energy Administration, which was more narrow than today's Department and involved pervasive regulation of energy industries, special "balance" requirements were imposed to ensure that the various points of view and functions of the affected industries and users were represented in the membership of committees. The provisions also limit the circumstances under which advisory committee meetings may be conducted in executive session, allowing closure only in the interests of national security or where the meeting involves research and development and opening the meeting would likely disclose trade secrets and commercial or financial information that is privileged or confidential. The Federal Advisory Committee Act requires advisory committee membership to be "fairly balanced in terms of the points of view represented" and contains provisions to assure the advice and recommendations will not be inappropriately influenced. The justification for continuing the more rigid "constituency representation" rules of the DOE Act is not readily apparent. With respect to open meetings, it is not clear why the rules of the Federal Advisory Committee Act, which allow closure of meetings under limited, specified circumstances, should not be available to the Department.

The Department supports H.R. 649 as a sensible modernization of its organic act that would conform its workings to the state of the art that governs all agencies. Repeal of these provisions would add uniformity and, as the bill's title suggests, standardization to the operation of federal agencies by making the Department subject to the same laws and in the same manner as other

agencies in the areas of rulemakings and advisory committees.

The second bill upon which you have sought the Department's views is H.R. 363. Due to its concerns about the safe use of electricity, the Department of Energy has had a 20-year commitment to addressing the issue of whether exposures to electric and magnetic fields (EMF) produced by equipment that carries or uses electricity results in adverse human health effects. For this reason the Department has managed an EMF biological mechanisms research program during this entire period. We are also co-managing with the National Institute of Environmental Health Sciences (NIEHS) the five-year EMF Research and Public Information Dissemination (RAPID) program established by the Energy Policy Act of 1992. The RAPID program expands and accelerates the EMF research effort with the focus being a report to Congress by the Director of NIEHS as one of the final activities of the program. Just as important, this program has established an effective Federal communications effort that provides the public with current information on EMF sources, EMF exposure levels, and research on possible health effects.

The research agenda for the RAPID program, which was developed by the EMF Interagency Committee with input from the National EMF Advisory Committee, is based on five years of funding. Detailed implementation plans developed and updated by both the Department of Energy and NIEHS are based on five years of actual and requested appropriations and associated non-Federal contributions. While EPACT provided authorization for the RAPID program for fiscal years 1993 through 1997, the first year of available appropriations was fiscal year 1994. The President's fiscal year 1998 budget request contains funding for the fifth and final year of the

RAPID program and completion of the Department's long-term commitment to EMF research. The Department previously has submitted legislation to extend the EPACT authority for the RAPID program through 1998, and we were pleased that the proposal was introduced as H.R. 4013 in the 104th Congress. The Department continues to believe an extension is appropriate in the interest of completing the work contemplated by the EPACT.

Thank you for the opportunity to discuss these matters uniquely affecting the Department of Energy.

Summary of Statement of Eric J. Fygi, Deputy General Counsel, Department of Energy
Subcommittee on Energy and Power, Committee on Commerce
February 26, 1997

The Department appreciates the opportunity to address two legislative proposals under consideration by the Subcommittee, H.R. 649, the Department of Energy Standardization Act of 1997, and H.R. 363, a bill to extend the Electric and Magnetic Fields Research and Public Information Dissemination Program.

H.R. 649 would amend the Department of Energy Organization Act (DOE Act) to make the Department subject to the same laws and in the same manner as other agencies in the areas of rulemakings and advisory committees. When the Department was established nearly 20 years ago, its most prominent mission related to development and enforcement of pervasive economic regulation of virtually all of the Nation's energy economy. This setting resulted in Congress placing unique constraints on the Department's activities and employees. Over time, it has been recognized that a number of these special rules either have become duplicative of existing law or are unnecessarily restrictive in view of the Department's evolving mission emphasis and the protections afforded the public by laws applying to all federal agencies.

With respect to rulemakings, H.R. 649 would repeal the DOE Act's special procedural requirements for publication of analyses accompanying proposals in the Federal Register, but would not affect the availability of important information to the public since Administrative Procedure Act provisions have been interpreted since 1977 to require agencies to disclose fully the basis or purpose of their rulemakings. It also would repeal a mandatory minimum 30-day comment period for notices of proposed rulemaking, in view of the fact that agencies routinely provide at least a 60-day comment period in compliance with Executive Order 12866. The bill would make the Department subject to the same requirements as other agencies with respect to rulemaking matters related to public property, loans, grants, or contracts. Finally, H.R. 649 would remove special balance and open meeting requirements for Departmental advisory committees, thus making the Department subject to the same Federal Advisory Committee Act rules as other agencies. The Department supports H.R. 649 as a sensible modernization of its organic act that would conform its workings to the state of the art that now governs all agencies.

H.R. 363 would extend for two years the Department's authority under the Energy Policy Act (EPACT) to carry out the Electric and Magnetic Fields Research and Public Information Dissemination Program (RAPID). The Department is co-managing this program with the National Institute of Environmental Health Sciences (NIEHS). The research agenda, which is designed to address the issue of whether exposures to electric and magnetic fields produced by equipment that carries or uses electricity results in adverse human health effects, is based on five years of actual and requested appropriations and associated non-Federal contributions. As a result of delays in the program's commencement, the Department previously has submitted legislation to extend the EPACT authority through 1998. The Department continues to believe an extension is appropriate in the interest of completing this work.